

The opinion in support of the decision being entered today was ***not*** written for publication and is ***not*** binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WALTER B. MUELLER

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Appeal No. 1997-1940  
Application 08/396,354

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ON BRIEF

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Before PAK, WARREN and OWENS, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

*Decision on Appeal and Opinion*

We have carefully considered the record in this appeal under 35 U.S.C. § 134, including the opposing view of the examiner, in the answer,<sup>1</sup> and appellant, in the brief, and based on our review, find that we cannot sustain either of the rejections of appealed claims 1, 2, 4, 7 and 8,<sup>2</sup> all of the claims in the application, under 35 U.S.C. § 112, first paragraph, written description and enablement requirements,

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<sup>1</sup> The examiner submitted a supplemental examiner's answer, mailed October 31, 2000 (Paper No. 24) in response to our remand of September 14, 2000 (Paper No. 23).

<sup>2</sup> See the amendments of September 5, 1995 (Paper No. 18) and February 18, 1995 (Paper No. 16) in the present application and the amendment of September 24, 1993 (Paper No. 9) in parent application 08/396,354. We observe that these two amendments in the present application have not been properly clerically entered.

and under 35 U.S.C. § 103 as being unpatentable over Mueller.<sup>3</sup> For the reasons pointed out by appellant in the brief, the examiner has failed to make out a *prima facie* case with respect to both grounds of rejection.

The examiner's decision is reversed.

*Reversed*

CHUNG K. PAK	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
CHARLES F. WARREN	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
TERRY J. OWENS	)	
Administrative Patent Judge	)	

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<sup>3</sup> Answer, pages 3-5.

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